IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5723 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI ISHWARBHAI AMIN

Versus

STATE OF GUJARAT

Appearance:

MR JF SHAH for Petitioners

MS MANISHA LAVKUMAR for Respondent No. 1

MR DF AMIN for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/06/2000

ORAL JUDGEMENT

1. This petition, by 12 employees of the respondent No.2, is filed and the prayer has been made therein to

quash and set aside the resolution of the respondent-Nagar Panchayat, Annexure-C. The second prayer is made to direct the State Government to give grant to respondent-Nagar Panchayat to enable it to pay the petitioners' salaries and allowances revised in accordance with the Sarela Pay Commission and Desai Pay Commission regularly from month to month and further directing the respondent-Nagar Panchayat to pay arrears of unpaid salary to the petitioners with interest @ 12% per annum from due date till payment. The prayer has also been made for grant of interim relief.

2. This matter has come for preliminary hearing in the Court on 4/11/1982, on which date the matter was admitted and it was ordered to be heard with the Special Civil Application No.5285 of 1986. Notice as to the interim relief has also been ordered. On 17th November, 1987, this Court granted interim relief in favour of the petitioners, the contents of the order is reproduced as under :

"Ad interim relief to the effect that the respondent -Vaso Nagar Panchayat should make payment of revised salaries to the petitioners from 1/1/1984 within a period of three months from the date of receipt of the writ of this Court. If the respondent-Panchayat has any difficulty of funds, it may approach the Government for that purpose through proper channel. The Government should consider that request and take appropriate action according to law. The above order is passed without prejudice to the rival claims of the parties."

3. The learned counsel for the parties are unable to disclose, what ultimately decided in the Special civil Application No.5285 of 1986 by the Court and whether the Order dated 17th November, 1987 has been complied with or not.

4. The petitioners are allocated to the services of the respondent no.2 which is converted from municipality after introduction of Panchayat Raj in the State with effect from 1/4/1963. This matter was admitted on 4/11/1987 and more than 13 years have already been passed neither of the respondents has cared to file reply to the Special Civil Application. So, the averments made by the petitioners in this Special Civil Application stand uncontroverted and accordingly, the same are taken to be correct.

5. The fact that from 11/2/1969 to 31/12/1983, the

petitioners were given monthly salary as per the revision of the pay as per the Sarela Pay Commission and Desai Pay Commission, is not disputed by the respondents. From 1st April, 1984 this is also not in dispute, that their benefits were taken away by the respondent no.2. Another fact that from 1/1/1984 onwards except allocated employees i.e. the petitioners, other employees of the respondent no.2 were being paid salaries and other benefits at par to those given to the Government employees. It is also a fact on which there is no dispute between the parties that even the allocated employees who have retired after 1/1/1984 have been given all the benefits. From these facts, I find that the petitioners are singled out. This has not been explained by the respondents, more so, when the Hon'ble Supreme Court in case of State of Gujarat V/s. R.K. Soni reported at 1984 SC 161 had decided that the Panchayat employees are the civil servants.

6. This court has protected the petitioners and as it is not the case of the petitioners that this order of grant of interim relief has not been complied with, it is to be taken to have been complied with. In the facts of this case and keeping in view the decision of the State of Gujarat V/s. R.K. Soni (supra) and other decisions of this Court, a reference of which has been made in paragraph No.3 of the Special Civil Application, I find that hostile discrimination has been made in the case of these allocated employees by the respondents in the matter of the payment of salaries to them i.e not to give them the benefits of the revised pay scales. If the respondent no.2 was not financially strong to bear out this burden, I failed to see any justification in the action of the respondent no.1 to give financial aid to it only for the other employees except the petitioners. Looking to the dates of the appointments of the petitioners given out in Annexure-A, by this time, all of them would have been retired from the services also.

7. The learned counsel for the petitioners on being put by the court is also in agreement that all of them may not be, but most of them would have now been retired. In the facts of this case, the relief as prayed for by the petitioners deserve to be given to them and in fact, it has also been given to the petitioners by this Court on 17th November, 1987. It is unfortunate that respondents have not disclosed to the Court what ultimately what they did with the order aforesaid.

8. In the result, this Special Civil Application succeeds and the action of the respondent to discontinue

the benefits of the revision of pay scales under Sarela Pay Commission and Desai Pay commission with effect from 1/1/1984 to the petitioners is declared to be illegal and discriminatory. The petitioners are entitled for the pay under the revised pay scales as made on the recommendation of the Sarela Pay Commission and Desai Pay Commission and they shall also be entitled for all other consequential benefits. If in pursuant to the order of this Court dated 17th November, 1987, the petitioners are not given the benefits of the revised pay scales, then the respondents are directed to determine those benefits payable to the petitioners within 2 months and make the payment of the same within two months next of the receipt of the writ of this order. In the case of the petitioners who have retired from the service, their retirement benefits shall also be accordingly revised within a period of 2 months of the date of receipt of the writ of this order. The petitioners shall be entitled for the interest on the arrears of the salaries as well as retirement benefits with effect from the date on which they filed this petition in this Court i.e. 3rd November, 1987 at the rate of 12% per annum to the date of the payments of amount of arrears. These benefits shall only be available to the petitioners in case the order dated 17th November, 1987 is not complied with by the respondents. The State of Gujarat, respondent no.1 herein, is directed to pay Rs.6000/- as the costs of this petition to the petitioners. i.e. @ Rs.500/- for each petitioner. This amount of Rs.500/- is to be paid to the each petitioner along with the arrears of the salaries and retirement benefits. Rule is made absolute accordingly.

(S.K.Keshote, J.)

(kamlesh)